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IN THE
SUPREME COURT OF THE UNITED STATES

STATE OF FLORIDA, *Petitioner*,

v.

STANLEY SHADLER, *Respondent*.

ON PETITION FOR A WRIT OF CERTIORARI TO THE FLORIDA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the good faith exception espoused in *United States v. Leon*, 468 U.S. 897 (1984), applies to a circumstance where an administrative arm of a government agency which collects computer data and is used as a source to check information by law enforcement agencies, provides erroneous information to a law enforcement officer, resulting in an invalid arrest?

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OPINION BELOW

The decision of the Florida Supreme Court is reported at 2000 WL 12841 (Fla.).

JURISDICTION

Petitioner is seeking review of a decision of final decree rendered by the highest court of the State which interpreted this Court's opinion in *Arizona v. Evans*, 514 U.S. 1 (1995) and *United States v. Leon*, 468 U.S. 897 (1984). Petitioner invokes this Court's jurisdiction pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the Fourth Amendment to the Federal Constitution, which states: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized."

STATEMENT OF THE CASE

While on routine patrol in Palatka, Florida on June 18, 1997, Deputy Gary Bowling received information from a fellow officer that Shadler's driving license had been suspended. The deputy verified the information by having his dispatcher run a "teletype" to determine the status of Shadler's license from the computer records maintained by the Florida Division of Drivers' Licenses (DDL) in Tallahassee, Florida. The DDL records showed that Shadler's driving license was suspended.

A couple of hours later, Deputy Bowling observed Shadler driving, and stopped him. The officer again "ran a computer check" on Shadler, and again received verification that Shadler's license was suspended. The officer arrested Shadler for driving while his license was suspended. During the search incident to that arrest, Deputy Bowling found drugs in Shadler's wallet.

After his arrest, Shadler went to the DDL to inquire why his license was suspended. The clerk at DDL determined that there was a computer error, and that his license was not suspended. Based on that information, Shadler filed a motion to suppress the drugs found on him when he was arrested.

The trial court granted the motion to suppress. The trial court found that the Division of Drivers' Licenses is a division of the Florida Department of Highway Safety and Motor Vehicles

(DHSMV). Since another division of the DHSMV is the Florida Highway Patrol, a law enforcement agency, then the erroneous information that was provided to Deputy Bowling was given to him by a law enforcement agency. Therefore, the trial court granted the motion to suppress, citing to a Florida Supreme Court case, *State v. White*, 660 So. 2d 664 (Fla. 1995).

On appeal by the State, the Fifth District Court of Appeal of Florida reversed the trial court, holding that "persons working for [the DDL] are not law enforcement personnel, but rather are more similar to the court employees in *Arizona v. Evans*," 514 U.S. 1 (1995).

The Florida Supreme Court granted further review and in a 4-3 decision, reversed the District Court's decision, holding that persons who work in "any capacity" for the Florida Department of Highway Safety and Motor Vehicles, "particularly" those who input data in the computer system, are law enforcement for purposes of invoking the exclusionary rule of the Fourth Amendment. Without addressing the principles expressed in *United States v. Leon*, 468 U.S. 897 (1984) or the reasonableness of the police officer's actions, the Florida Supreme Court stated that "if the exclusionary rule is not applied to evidence secured due to [DDL's] mistakes, neither the Department of Highway Safety nor its license division will have an incentive to maintain records current and correct."

The dissent in a more reasoned opinion concluded that:

> "...though stating that it recognizes the directive of article I, section 12 of the Florida Constitution, the majority avoids the requirement that our search and seizure applications comply with the decisions of the United States Supreme Court. Reflective of this avoidance of the requirement is the majority's reliance on only the concurring opinions in *Evans* and on a 1974 opinion concerning the exclusionary

rule in *United States v. Calandra*, 414 U.S. 338, 94 S.Ct. 613, 38 L.Ed.2d 561 (1974), and the majority's total omission of any reference to or quotation from Chief Justice Rehnquist's majority opinion in *Evans* and any reference whatsoever to the 1984 seminal opinion concerning the exclusionary rule in *Leon*, 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984). It is *Leon* which is discussed extensively in the majority opinion in *Evans*."

The dissenting opinion further observed citing *Leon*,

> ...The *Leon* Court then examined whether application of the exclusionary rule could be expected to alter the behavior of the law enforcement officers. We concluded:
>
> > "[W]here the officer's conduct is objectively reasonable, 'excluding the evidence will not further the ends of the exclusionary rule in any appreciable way; for it is painfully apparent that ... the officer is acting as a reasonable officer would and should act in similar circumstances. Excluding the evidence can in no way affect his future conduct unless it is to make him less willing to do his duty.' " *Leon, supra*, at 919-920 (quoting *Stone, supra*, at 5349-540 (White, J., dissenting)).

See also Massachusetts v. Sheppard, 468 U.S. 981, 990-991, 104 S.Ct. 3424, 82 L.Ed.2d 737 (1984) ("[S]uppressing evidence because the judge failed to make all the necessary clerical

corrections despite his assurances that such changes would be made will not serve the deterrent function that the exclusionary rule was designed to achieve"). *Thus, we held that the "marginal or nonexistent benefits produced by suppressing evidence obtained in objectively reasonable reliance on a subsequently invalidated search warrant cannot justify the substantial costs of exclusion."* *Leon, supra,* at 922.

Evans v. Arizona, 514 U.S. at 10-11 (emphasis added) (citations omitted). The *Evans* court then, in reversing the Supreme Court of Arizona's application of the exclusionary rule to a mistake made other than by the arresting law enforcement agency, said:

> This holding is contrary to the reasoning of *Leon, supra; Massachusetts v. Sheppard,* [468 U.S. 981 (1984)], and *Krull, supra.* If court employees were responsible for the erroneous computer record, the exclusion of evidence at trial would not sufficiently deter future errors so as to warrant such a severe sanction. First, as we noted in *Leon,* the exclusionary rule was historically designed as a means of *deterring police misconduct, not mistakes by court employees.* See *Leon, supra,* at 916, see also *Krull, supra,* at 350. *Second, respondent offers no evidence that court employees are inclined to ignore or subvert the Fourth Amendment or that lawlessness among these actors requires application of the extreme sanction* of exclusion. *See Leon, supra,* at 916 and n. 14; see also *Krull, supra,* at 350-351. To the contrary, the Chief Clerk of the Justice Court testified at the suppression hearing that this type of error occurred once every three or four years. App. 37.

App. pages 12, 17.

The State's motion for rehearing, arguing that *Leon* and *Evans* should apply based on the police officer's reasonable

reliance on the information provided by the Division of Drivers' License was denied and mandate issued February 28, 2000.

REASONS FOR GRANTING THE WRIT

I. The good faith exception espoused in *United States v. Leon*, 468 U.S. 897 (1984), applies.

Before applying the exclusionary rule to evidence obtained pursuant to an unlawful arrest, a court must determine whether the good faith exception set forth in *United States v. Leon*, 468 U.S. 897 (1984), applies to the facts of the case.[1] The *Leon* good faith exception requires a court to find three factors before excluding evidence.

The first aspect of the *Leon* analysis is based on the concept that the exclusionary rule was designed "to deter police misconduct". *Illinois v. Krull*, 480 U.S. 340 (1987). The reviewing court must determine whether police misconduct is involved verses some "non-police" error or conduct. Second, the court looks for evidence that the person committing the error, fits within the category of persons who are "inclined to ignore or subvert the Fourth Amendment or that lawlessness among these actors requires the application of the extreme sanction of exclusion." *Leon, supra*, at 916. A court would have to find evidence that the person committing the error was inclined to violate individuals' Fourth Amendment rights. If there is no evidence of the inclination to ignore or subvert the Fourth Amendment, then the exclusionary rule does not apply. Third, a court, must determine that there is a basis for believing that the exclusion of evidence will have a significant deterrent effect on the person committing the error. *Evans, supra*. In essence, there must be a basis to believe that the threat of exclusion of evidence can reasonably be expected to deter the same conduct in the future.

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[1] Article I, Section 12 of the Florida Constitution requires that Florida's search and seizure provision be construed: ". . . in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court. . . .".

In the instant case, the Florida Supreme Court failed to make any *Leon* analysis before deciding that the exclusionary rule should apply whenever the Division of Drivers' Licenses provides erroneous information in reponse to a law enforcement officer's inquiry. Without a *Leon* analysis, the Florida Supreme Court's decision to apply the exclusionary rule to an administrative agency is erroneous and directly conflicts with this Court's holdings in *Leon* and *Evans*.

As observed by the dissent, the Division of Drivers' Licenses performs no law enforcement function. It is an administrative agency made up of civilian employees, not sworn officers, whose responsibilities are to generate and maintain the Division's computer data relating to the issuance of drivers' licenses for the entire State. The Division does not enforce any criminal laws, but merely maintains the records generated by the enforcement of the laws. It is, by function, no different than the court clerks in *Evans*. As noted by Justice Wells, dissenting in *Shalder*, "...it is patently erroneous to stretch the reach of the exclusionary rule...to the Division of Driver Licenses. The Division of Driver Licenses is quite unmistakably an administrative agency. See Fla. Admin. Code R. 15-1.001-.006 (1998). This is obviously similar to the court clerk being in an administrative role in *Evans*. Although the majority of this Court may disagree with *Evans* or *Leon*, this Court's members are oath bound to recognize that this is the law." App. pages 17-18.

There was no evidence that the administrative clerks at the Division were inclined to ignore or subvert the Fourth Amendment. Nor does the record below reflect that there was any evidence that errors often occurred, regardless of the reason for the error. Without an indication that there is some kind of "lawlessness" among the administrative clerks of the Division that would require the extreme sanction of excluding evidence in a

criminal case, the use of the exclusionary rule is neither appropriate nor legally authorized.[2]

Finally, there is no reason to believe that using the exclusionary rule when a drivers' license clerk makes an error will have any effect at all on the clerk who committed the error. The drivers' license clerk sitting in one city has absolutely no interest in the outcome of a criminal prosecution in a anywhere. Indeed, is it likely that the clerk will ever know about the criminal prosecution at all. There is no mechanism by which that clerk, or

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[2] The individuals who work for that agency are civilian, non-law enforcement personnel who perform various clerical functions relating to the creation and maintenance of computer data.

The information that makes up the computer data comes from many diverse sources. Some of it clearly comes from law enforcement, such as traffic citations and traffic arrests. But a significant amount of information also comes from the clerks of the court as to suspensions and reinstatements, auto insurances companies regarding the driver's financial responsibility, tax collectors, driving schools, the Florida Department of Revenue for child support information, the Division of Probation and Parole, as well as other states' drivers' license bureaus and court clerks.

Some of those agencies can actually control data directly. For instance, courts (judges and clerks) can remove driving suspensions upon a showing of proof of insurance. That information can be put in the computer without the involvement of any employee of the Division of Drivers' Licenses. It is a system over which the Division does not have exclusive control.

Furthermore, it would be impossible for the Division to verify every piece of information put into the system. When other states provide information that an individual's driver's license is suspended in that other state, the Division of Drivers' Licenses must rely on that information. The Division of Drivers' Licenses is simply a repository for all of the information relevant and necessary for the proper regulation of the driving privilege as delineated by Florida statutes.

any other clerk, will ever know that evidence was excluded from a criminal prosecution.[3]

Obviously, it is the police officer's conduct that is the focus in applying the exclusionary rule. If future police conduct can be deterred, corrected, or altered so as to stop Fourth Amendment violations, then the exclusionary rule is appropriate. The law enforcement community learns that violations of the Fourth Amendment will result in the exclusion of the evidence. If, however, the conduct is **not** police conduct, then excluding the evidence will **not** further protect Fourth Amendment rights.

In the instant case, the conduct resulted in an error was **not** police conduct. The police acted absolutely properly in responded to what was believed to be accurate information. The officer arrested the Defendant for driving with a suspended license. Prior to the arrest, the officer did everything possible to verify that the Defendant did not have a valid license. No matter what the officer did, the computer check would have shown the same information. There was clearly no inappropriate police conduct. Excluding the evidence will **not** change the police

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[3] As observed by the district court:

> We disagree with the trial court that the error in this case can be attributed to police or law enforcement personnel merely because the Department contains four divisions under the governor and cabinet of Florida, one of which is the Florida Highway Patrol (a law enforcement agency). The other three divisions, the Division of Driver's Licenses, the Division of Motor Vehicles and the Division of Administrative Services, are independent from one another as well as the Florida Highway Patrol. Each has its own separate organization structure and division director. The erroneous information came from the Division of Driver's Licenses. Persons working for that division are not law enforcement personnel, but rather are more similar to the court employees in *Arizona v. Evans*.

conduct. Excluding the evidence will not change the police officers' future conduct, unless it makes him "less willing to do his duty." *See Leon, supra*, at 920.

The Florida Supreme Court's ruling punishes the police officer for his reasonable reliance on the information which was provided to him by the administrative agency that creates and maintains the records of drivers' licenses. Excluding clear evidence of criminal conduct in a situation where the arresting officer, and the arresting agency, had no way of knowing about the computer error or changing it in any way, is contrary to this Court's holdings in *Arizona v. Evans, supra*, and *United Stated v. Leon, supra*. If the Florida Supreme Court decision is allowed to stand, it will seriously hamper law enforcement's ability to obtain evidence and present it at trial. Additionally, instead of restricting the exclusionary rule to those instances where its remedial objectives are best served, it will substantially and unnecessarily expand the exclusionary rule.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests this Court grant review and summarily reverse the opinion of the Florida Supreme Court based on *Leon* and *Evans*.

Respectfully submitted,

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APPENDIX

DECISION OF THE FLORIDA SUPREME COURT, rendered January 6, 2000, rehearing denied February 28, 2000 . . . . . A - 1

DECISION OF THE FIFTH DISTRICT COURT OF APPEAL, rendered July 31, 1998 . . . . . A - 20

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2000 WL 12841, Shadler v. State, (Fla. 2000)

*12841 Stanley SHADLER, Petitioner,

v.

STATE of Florida, Respondent.

No. SC93784.

Supreme Court of Florida.

Jan. 6, 2000.

Application for Review of the Decision of the District Court of Appeal - Direct Conflict, Fifth District--Case No. 5D97-3465 (Putnam County)

Kevin R. Monahan, Palatka, Florida, for Petitioner.

Robert A. Butterworth, Attorney General, and Rebecca Roark Wall, Assistant Attorney General, Daytona Beach, Florida, for Respondent.

ANSTEAD, J.

**1 We have for review *State v. Shadler,* 714 So.2d 662 (Fla. 5th DCA 1998), which expressly and directly conflicts with the opinion in *Bruno v. State,* 704 So.2d 134 (Fla. 1st DCA 1997). We have jurisdiction. *See* art. V, s 3(b)(3), Fla. Const. For the reasons that follow, we quash the decision in *Shadler* and find that the exclusionary rule applies to an error committed by the Florida Department of Highway Safety and Motor Vehicles through its Division of Driver Licenses.

PROCEEDINGS TO DATE

On June 18, 1997, Deputy Gary Bowling received information from a fellow police officer that petitioner Stanley Shadler's license had been suspended. He subsequently verified this information through his dispatcher. About two hours later, Bowling stopped Shadler on the basis of the information received from the other officer and the dispatcher. At the stop, Bowling performed a computerized check through the Department of Highway Safety and Motor Vehicles, Division of Driver Licenses, which confirmed that Shadler's license had been suspended. In fact, however, as the parties agree, Shadler's license had not been suspended and the information relied upon by Bowling was in error. Relying upon the erroneous information, Bowling arrested Shadler for driving with a suspended license and searched him incident to that arrest. During the search, Bowling found contraband in a plastic bag inside Shadler's wallet. Bowling then charged Shadler with unlawful possession of the contraband.

After his arrest, Shadler went to the "Motor Vehicle Bureau" to inquire why his license was reported suspended. There, an examiner told him that the mistaken information was due to a computer error and that his license was not suspended. (FN1) Before trial, Shadler filed a motion to suppress the fruits of the search, claiming that the arrest and search incident to that arrest were unlawful because they were predicated upon an erroneous belief that his license had been suspended. At the hearing, Shadler argued that the Division of Driver Licenses should be treated as a law enforcement entity because it is part of the Department of Highway Safety, which is also the parent department of the Florida Highway Patrol. Therefore, under the rule in *State v. White*, 660 So.2d 664 (Fla.1995), the contraband should be excluded.

The trial court granted the motion, reasoning that the Department of Highway Safety's failure, through its driver's license division, to keep its records accurate and current was a

mistake attributable to a law enforcement agency of the government. On appeal, the Fifth District reversed, and, focusing solely on the duties of the Division of Driver Licenses of the Department of Highway Safety, held that persons working for the Division should be treated as the court employees in *Arizona v. Evans*, 514 U.S. 1, 115 S.Ct. 1185, 131 L.Ed.2d 34 (1995), and, therefore, the mistake should not be attributed to a law enforcement agency. *See Shadler*, 714 So.2d at 663.

**2 Shadler sought review in this Court based on conflict with *Bruno v. State*, 704 So.2d 134 (Fla. 1st DCA 1997). In *Bruno*, an officer stopped the defendant, Bruno, for speeding and, upon verifying his license "over the radio," the officer was erroneously advised that the license had been suspended. As a result, the officer arrested Bruno. In a search incident to that arrest, the officer discovered contraband on Bruno's person. At trial, the judge denied Bruno's motion to suppress. The First District reversed, finding that "[b]ecause the police information failed to support a legal arrest, the evidence seized as a result of the arrest should have been suppressed and the [trial] judge erred in denying the defense's motion for same." *Id.* at 135.

APPLICABLE LAW

[1] [2] The parties agree that this case is generally controlled by the rule of law enunciated in *Arizona v. Evans*, 514 U.S. 1, 115 S.Ct. 1185, 131 L.Ed.2d 34 (1995), and *State v. White*, 660 So.2d 664 (Fla.1995). Pursuant to *Evans*, if an error leading to an unlawful arrest and a subsequent search and seizure was made by court personnel, then the exclusionary rule will not apply and the evidence obtained can be used against the accused. *See Evans*, 514 U.S. at 14. In *White*, we ruled that if the error causing the arrest is attributable to law enforcement personnel, then the seized evidence must be suppressed under the exclusionary rule. *See White*, 660 So.2d at 667. However, neither *Evans* nor *White* contained a broad analysis covering all governmental entities and their mistakes.

In *Evans*, the defendant was stopped by the police for a routine traffic violation. *See* 514 U.S. at 4. When the officer checked the defendant's driver's license using a computer data terminal in his patrol car, the information returned erroneously reported that the defendant's license had been suspended and that there was an outstanding misdemeanor warrant for his arrest. *See id.* Immediately, the officer arrested the defendant. *See id.* In a search incident to the arrest, the officer found contraband under the passenger's seat of the defendant's car. *See id.*

At a suppression hearing, it was discovered that the "clerk of the court" failed to notify the Sheriff's Office that the warrant had been quashed. *See id.* The Arizona Supreme Court agreed that the evidence should be suppressed. On review, the U.S. Supreme Court reversed and in a seven-to-two decision, narrowly limited its holding as to the application of the exclusionary rule to errors committed by court personnel. Reasoning that "court clerks are not adjuncts to the law enforcement team engaged in ... ferreting out crime [and] have no stake in the outcome of particular criminal prosecutions," the Court found that application of the exclusionary rule in these circumstances would have no significant effect on court employees responsible for informing the police that a warrant has been quashed. *Id.* at 15. Several concurring justices emphasized in separate opinions that the *Evans* holding was strictly limited to errors by court personnel. Justice Souter, for example, noted:

> **3 [W]e do not answer another question that may reach us in due course, that is, how far, in dealing with fruits of computerized error, our very concept of deterrence by exclusion of evidence should extend to the government as a whole, not merely the police, on the ground that there would otherwise be no reasonable expectation of keeping the number of resulting false arrests within an acceptable minimum limit.

Evans, 514 U.S. at 18 (Souter, J., concurring).

State v. White

A few months after the decision in *Evans*, this Court was presented with a similar issue involving erroneous reliance upon a reported warrant in which the error leading to the arrest was committed by personnel working in a police department. *See White*, 660 So.2d at 666. The basis for the erroneous report on the status of the warrant in *White* was a computer error "in the Sheriff's Office." *Id.* at 665-66. In our decision, we recognized that *Evans* had not spoken directly to the question of whether the exclusionary rule should apply when the error leading to the unlawful arrest was attributable to law enforcement or other executive branch agencies. *See id.* at 666.

We concluded that the error was "within the collective knowledge of the sheriff's office" and could not serve as the proper basis for a lawful arrest. *Id.* at 668. We further found that the failure of the police to maintain accurate and updated records fit into the category of conduct meant to be covered by the exclusionary rule. *See id.* at 667. Specifically, we stated that "[s]uppression of evidence seized pursuant to police computer error will encourage law enforcement agencies to diligently maintain accurate and current computer records." *Id.* In approving the application of the exclusionary rule, the opinion cited with approval the automation error concerns expressed by the Arizona Supreme Court:

> It is repugnant to the principles of a free society that a person should ever be taken into police custody because of a computer error precipitated by government carelessness. As automation increasingly invades modern life, the potential for Orwellian mischief grows. Under such circumstances the exclusionary rule is a "cost" we cannot afford to be without.

Id. at 667-68 (quoting *State v. Evans*, 177 Ariz. 201, 866 P.2d 869, 872 (Ariz.1994), *rev'd*, 514 U.S. 1, 115 S.Ct. 1185, 131 L.Ed.2d 34 (1995)).

FUNCTION OF THE DEPARTMENT OF HIGHWAY SAFETY

[3] The Department of Highway Safety is a large component department of Florida's executive branch. On its internet web page, the following "Overview" of its function is presented:

> **4 At the Department of Highway Safety and Motor Vehicles (DHSMV), we come into contact with nearly every Floridian.
>
> People visit our offices to get a driver license to operate their vehicles. They come to us to register and title these same vehicles. They may receive assistance from the Florida Highway Patrol when their vehicle breaks down along Florida's highways or be reminded to slow down and buckle up.
>
> But there is more to DHSMV than meets the eye. Our mission is making highways safe through service, education and enforcement.
>
> More than 5,000 people around the state are dedicated to accomplishing this mission in more ways than most people know. You may be surprised by some of the duties department members perform.

Florida Department of Highway Safety & Motor Vehicles, *Overview* (visited December 20, 1999) <http://www.hsmv.state.fl.us/html/overview.html>. Additionally, the Department of Highway Safety describes its mission as follows: "[promoting] a safe driving environment through law enforcement, public education and service, reduction of traffic crashes, titling and registering of motor vehicles and

vessels, licensing motor vehicle operators, and regulat[ing] ... motor vehicle exhaust." Florida Department of Highway Safety & Motor Vehicles, *Quarterly Report*, July-September 1999–Mission Statement. Also, the following are among the listed goals of the Department of Highway Safety: (1) to "provide the most effective *highway safety and enforcement programs* through the use of appropriate traffic and criminal law enforcement ..."; (2) to "provide administration and management to *meet the challenge of highway safety* and support the headquarters and field activities of the department"; and (3) to "*provide assistance to* local, state, and federal agencies and *highway safety organizations* through a comprehensive records and management information system which reflects driver and vehicle status and traffic crash information." Florida Department of Highway Safety & Motor Vehicles, *Goals* (visited December 20, 1999) <http://www.hsmv.state.fl.us/goals.html> (emphasis added) (citations omitted).

To effectuate these interrelated goals, the Department is organized into four divisions. (FN2) Two of these divisions, the Highway Patrol and the Division of Driver Licenses, account for nearly three-quarters of the Department's staff. (FN3) *See* Florida Highway Patrol, *Overview* (visited December 20, 1999) <http://www.fhp.state.fl.us/html/overview.html>. The larger of the two, the Highway Patrol, represents 45% of the total staff. *See* Florida Highway Patrol, *Overview* (visited December 20, 1999) <http://www.fhp.state.fl.us/html/overview.html>

While each division is supervised by a separate director and has its own organizational structure, *see* Fla. Admin. Code R. 15-1.003-.006, the Department as a whole is subject to section 20.05(1), Florida Statutes (1997), which provides:

> **5 Each head of a department, except as otherwise provided by law, must:

(a) Plan, direct, coordinate, and execute the powers, duties, and functions vested in that department or vested in a division, bureau, or section of that department; powers and duties assigned or transferred to a division, bureau, or section of the department must not be construed to limit this authority and this responsibility....

Moreover, section 321.05, Florida Statutes (1997), gives broad law enforcement powers to "[t]he [highway] patrol officers *under the direction and supervision of the Department of Highway Safety and Motor Vehicles,*" s 321.05, Fla. Stat. (1997) (emphasis added). Accordingly, because the Department of Highway Safety is charged with law enforcement both in fact and by law, we conclude that it is clearly a law enforcement agency.

As noted above, the Department of Highway Safety not only considers itself a major law enforcement agency, but it has specifically articulated as one of its three major goals the following: "Provid[ing] assistance to local, state, and federal agencies and highway safety organizations through a comprehensive records and management system which reflects driver and vehicle status information." Hence, it is apparent that the Department itself recognizes the critical role the Division of Driver Licenses plays in law enforcement. Since its inception, one of the primary responsibilities of the Department's driver's license division has been to create and maintain a permanent record for every licensed driver, including the recording of revocations, suspensions, disqualifications, convictions, crashes and other driving history information. *See* s 322.20, Fla. Stat. (1997). In fact, much of the information comes from the Highway Patrol and other law enforcement agencies. *See* Fla. Admin. Code R. 15-1.004(4)-(6). The Department estimates that in the 1998-1999 fiscal year, the Division of Driver Licenses will process over 15,400,000 driver records, *including roughly 85,000 license revocations and more than 919,000 suspensions.* *See* Florida Department of Highway Safety & Motor Vehicles, *Driver License*

Facts & Figures (visited December 20, 1999) <http://www.hsmv.state.fl.us/reports/facts_dl.html>.

Of course, the maintenance of records of revocations and suspensions clearly relate directly to the enforcement of the laws relating to driving privileges. More importantly, however, as the State conceded at oral argument, every law enforcement agency in the state, from the Highway Patrol to the smallest municipal police department, relies on the division's records to verify driver's licenses and their current status in order to enforce the law. Accordingly, not only is the division an integral part of the Department of Highway Safety and its overall mission, but in terms of reliance upon the accuracy of its records, it is a vital part of the law enforcement infrastructure of the entire State of Florida. (FN4)

APPLICATION OF *EVANS* AND *WHITE*

**6 Our constitution requires that search and seizure rights "shall be construed in conformity with the Fourth Amendment to the United States Constitution, as interpreted by the United States Supreme Court." Art. I, s 12, Fla. Const. In this vein, we recognize that the United States Supreme Court has stated that the exclusionary rule is a "judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect." *Unites States v. Calandra,* 414 U.S. 338, 348, 94 S.Ct. 613, 38 L.Ed.2d 561 (1974). As noted, we expressed the view in *White* that "[i]t is repugnant to the principles of a free society that a person should ever be taken into police custody because of a computer error precipitated by government carelessness." *White* at 667 (quoting *State v. Evans,* 177 Ariz. 201, 866 P.2d 869, 872 (Ariz.1994), *rev'd,* 514 U.S. 1, 115 S.Ct. 1185, 131 L.Ed.2d 34, (1995)). In this regard we find ourselves in agreement with the views expressed by Justice O'Connor (and joined in by two of her colleagues) in *Evans:*

> In recent years, we have witnessed the advent of powerful, computer-based recordkeeping systems that facilitate arrests in ways that have never before been possible. The police, of course, are entitled to enjoy the substantial advantages this technology confers. They may not, however, rely on it blindly. With the benefits of more efficient law enforcement mechanisms comes the burden of corresponding constitutional responsibilities.

Evans, 514 U.S. at 17-18, (O'Connor, J., concurring). Based upon our analysis of the duties and responsibilities of the Department of Highway Safety as set out above, we conclude that the Department, including its driver's license division, is essentially a law enforcement agency, and that our holding in *White* should apply.

We reject the invitation of the State to focus solely on the work of the Division of Driver Licenses. We cannot focus solely on the internal subdivisions of the Department of Highway Safety any more than we can focus solely on the internal subdivisions of any large law enforcement agency in assessing its accountability and protecting our citizens from unlawful arrests due to agency mistakes. While a record keeping clerk in a sheriff's office may be absolutely devoted solely to his own work, that makes him no less a part of the sheriff's office and subject to its management and control. So, too, with a division of the Department of Highway Safety. Moreover, we conclude that if the exclusionary rule is not applied to evidence secured due to the division's mistakes, neither the Department of Highway Safety nor its driver's license division will have an incentive to maintain records current and correct. (FN5) By applying the rule it will be clear that there is a visible consequence to the mistake and the mistake will not simply be overlooked.

**7 Further, and clearly unlike the court personnel in *Evans*, we conclude that at the very least the employees of the

Division of Driver Licenses are "adjuncts to the law enforcement team" in the Department of Highway Safety. Accordingly, the operation of the exclusionary rule in this context does not, as the State would suggest, serve to "punish" police for their "reasonable reliance" upon the mistake of some wholly separate and independent agency completely unconnected to law enforcement. We have already discussed the many law enforcement roles of the Department of Highway Safety and its divisions, and their close relationships. In addition, the information maintained and provided by the Department through its divisions is used in virtually every traffic stop effectuated by the police: thus it affects every Florida citizen using the state's roads. Since the Department processes over 1,000,000 license suspensions and revocations each year, even a slight error rate puts thousands of Florida's citizens at risk of unlawful arrests and subsequent seizures.

Finally, and of greatest importance, we conclude that the exclusion of evidence in cases such as the one at bar will surely serve to encourage accurate record-keeping of driver's license information. The exclusionary rule is perhaps the only means by which the judiciary can help to ensure the accuracy of records and information compiled by the Department of Highway Safety and its divisions that routinely provide records to Florida's police and sheriffs' departments. Because the Department of Highway Safety is responsible for the related law enforcement functions of agency record-keeping and monitoring traffic offenses and crime on the state's highways, there is an institutional obligation as well as a direct mechanism for feedback from fellow employees to communicate the effect of the exclusionary rule. Surely, the Department of Highway Safety, above all others, will consistently strive to see that no mistakes are made and that no citizen is wrongfully subjected to an arrest or search predicated upon a mistake. That is, after all, the net effect of our ruling, to recognize that the government had no right, because of a mistake by the Department of Highway Safety, to seize and search one of its citizens. In the end, the government is discouraged from

making such mistakes, and is only deprived of what it had no right to in the first instance.

CONCLUSION

Therefore, because the Department of Highway Safety is an executive branch agency and is an integral part of law enforcement in the State of Florida, and because operation of the exclusionary rule in this case should have a significant effect upon the Department's record-keeping efforts, we find that the error made here is a "law enforcement" error under *White*. Accordingly, we quash the district court's decision and find that the trial court correctly excluded the evidence obtained during the unlawful search, and in so doing, we approve *Bruno* to the extent it held that a similar computer error is a law enforcement error for purposes of the exclusionary rule.

**8 It is so ordered.

SHAW, PARIENTE and LEWIS, JJ., concur.

WELLS, J., dissents with an opinion, in which HARDING, C.J., and QUINCE, J., concur.

WELLS, J., dissenting.

I dissent for the following reasons.

First, this Court has no jurisdiction. There is no conflict between the Fifth District's decision in this case and the First District's decision in *Bruno v. State*, 704 So.2d 134 (Fla. 1st DCA 1997). There is not one mention of the Florida Department of Highway Safety and Motor Vehicles or the Division of Driver Licenses in *Bruno*. If this Court does have conflict jurisdiction, it is *Bruno* which should be quashed for not expressly recognizing that the reach of *State v. White*, 660 So.2d 664 (Fla.1995), is

limited to the law enforcement arresting agency. This is the only way that *White* can conform with the United States Supreme Court's decisions in *Arizona v. Evans*, 514 U.S. 1, 115 S.Ct. 1185, 131 L.Ed.2d 34 (1995), and *United States v. Leon*, 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984).

Second, though stating that it recognizes the directive of article I, section 12 of the Florida Constitution, the majority avoids the requirement that our search and seizure applications comply with the decisions of the United States Supreme Court. Reflective of this avoidance of the requirement is the majority's reliance on only the concurring opinions in *Evans* and on a 1974 opinion concerning the exclusionary rule in *United States v. Calandra*, 414 U.S. 338, 94 S.Ct. 613, 38 L.Ed.2d 561 (1974), and the majority's total omission of any reference to or quotation from Chief Justice Rehnquist's majority opinion in *Evans* and any reference whatsoever to the 1984 seminal opinion concerning the exclusionary rule in *Leon*, 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984). It is *Leon* which is discussed extensively in the majority opinion in *Evans*.

As Judge Sharpe correctly recognizes in the Fifth District opinion, the exclusionary rule in this context only excludes evidence which "stems from police or law enforcement employees" unless there is some showing of bad faith reliance by such law enforcement employees. The following from the majority opinion in *Evans* makes this crystal clear:

> The Fourth Amendment states that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized." *We have recognized, however, that the Fourth Amendment contains no provision expressly precluding the use of evidence obtained in violation of its commands. "The*

wrong condemned by the [Fourth] Amendment is 'fully accomplished' by the unlawful search or seizure itself," and the use of the fruits of a past unlawful search or seizure " 'work[s] no new Fourth Amendment wrong,' " Leon, supra, at 906 (quoting *Calandra, supra,* at 354).

**9 "The question whether the exclusionary rule's remedy is appropriate in a particular context has long been regarded as an issue separate from the question whether the Fourth Amendment rights of the party seeking to invoke the rule were violated by police conduct." *Illinois v. Gates,* 462 U.S. 213, 223, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983); see also *United States v. Havens,* 446 U.S. 620, 627-628, 100 S.Ct. 1912, 64 L.Ed.2d 559 (1980); *Stone v. Powell,* 428 U.S. 465, 486-487, 96 S.Ct. 3037, 49 L.Ed.2d 1067 (1976); *Calandra, supra,* at 348. The exclusionary rule operates as a judicially created remedy designed to safeguard against future violations of Fourth Amendment rights through the rule's general deterrent effect. *Leon, supra,* at 906; *Calandra, supra,* at 348. As with any remedial device, the rule's application has been restricted to those instances where its remedial objectives are thought most efficaciously served. *Leon, supra,* at 348. *Where "the exclusionary rule does not result in appreciable deterrence, then, clearly, its use ... is unwarranted." United States v. Janis,* 428 U.S. 433, 454, 96 S.Ct. 3021, 49 L.Ed.2d 1046 (1976).

In *Leon,* we applied these principles to the context of a police search in which the officers had acted in objectively reasonable reliance on a search warrant, issued by a neutral and detached Magistrate, that later was determined to be invalid. 468 U.S., at 905. On the basis of three factors, we determined that there was no sound reason to apply the exclusionary rule as a means of deterring misconduct on the part of judicial officers who are responsible for issuing warrants. See *Illinois v. Krull,* 480 U.S. 340, 348, 107 S.Ct. 1160, 94 L.Ed.2d 364 (1987) (analyzing

Leon, supra). First, we noted that the exclusionary rule was historically designed " 'to deter police misconduct rather than to punish the errors of judges and magistrates.' " *Krull, supra,* at 348 (quoting *Leon, supra,* at 916). Second, there was " 'no evidence suggesting that judges and magistrates are inclined to ignore or subvert the Fourth Amendment or that lawlessness among these actors requires the application of the extreme sanction of exclusion.' " *Krull, supra,* at 348 (quoting *Leon, supra,* at 916). Third, and of greatest importance, there was no basis for believing that exclusion of evidence seized pursuant to a warrant would have a significant deterrent effect on the issuing judge or magistrate. *Krull, supra,* at 348.

**10 The *Leon* Court then examined whether application of the exclusionary rule could be expected to alter the behavior of the law enforcement officers. We concluded:

> "[W]here the officer's conduct is objectively reasonable, 'excluding the evidence will not further the ends of the exclusionary rule in any appreciable way; for it is painfully apparent that ... the officer is acting as a reasonable officer would and should act in similar circumstances. Excluding the evidence can in no way affect his future conduct unless it is to make him less willing to do his duty.' " *Leon, supra,* at 919-920 (quoting *Stone, supra,* at 5349-540 (White, J., dissenting)).

See also Massachusetts v. Sheppard, 468 U.S. 981, 990-991, 104 S.Ct. 3424, 82 L.Ed.2d 737 (1984) ("[S]uppressing evidence because the judge failed to make all the necessary clerical corrections despite his assurances that such changes would be made will not serve the deterrent function that the exclusionary rule was designed to achieve"). *Thus, we held that the "marginal or nonexistent benefits produced by suppressing evidence obtained in objectively reasonable*

reliance on a subsequently invalidated search warrant cannot justify the substantial costs of exclusion." Leon, supra, at 922.

Evans v. Arizona, 514 U.S. at 10-11 (emphasis added) (citations omitted). The *Evans* court then, in reversing the Supreme Court of Arizona's application of the exclusionary rule to a mistake made other than by the arresting law enforcement agency, said:

> This holding is contrary to the reasoning of *Leon, supra; Massachusetts v. Sheppard,* [468 U.S. 981 (1984)], and *Krull, supra.* If court employees were responsible for the erroneous computer record, the exclusion of evidence at trial would not sufficiently deter future errors so as to warrant such a severe sanction. First, as we noted in *Leon,* the exclusionary rule was historically designed as a means of *deterring police misconduct, not mistakes by court employees.* See *Leon, supra,* at 916, see also *Krull, supra,* at 350. *Second, respondent offers no evidence that court employees are inclined to ignore or subvert the Fourth Amendment or that lawlessness among these actors requires application of the extreme sanction* of exclusion. *See Leon, supra,* at 916 and n. 14; see also *Krull, supra,* at 350-351. To the contrary, the Chief Clerk of the Justice Court testified at the suppression hearing that this type of error occurred once every three or four years. App. 37.

Finally, and most important, *there is no basis for believing that application of the exclusionary rule in these circumstances will have a significant effect on court employees responsible for informing the police that a warrant has been quashed. Because court clerks are not adjuncts to the law enforcement team engaged in the often competitive enterprise of ferreting out crime,* see *Johnson v. United States,* 333 U.S. 10, 14, 68 S.Ct. 367, 92 L.Ed. 436 (1948), they have no stake in the

outcome of particular criminal prosecutions. *Cf. Leon,* at 917; *Krull, supra,* at 352....

> **11. If it were indeed a court clerk who was responsible for the erroneous entry on the police computer, application of the exclusionary rule also *could not be expected to alter the behavior of the arresting officer.* As the trial court in this case stated: "I think the police officer [was] bound to arrest. I think he would [have been] derelict in his duty if he failed to arrest." App. 51. *Cf. Leon, supra,* at 920 (" 'Excluding the evidence can in no way affect [the officer's] future conduct unless it is to make him less willing to do his duty.' " quoting *Stone,* 428 U.S., at 540 (White, J., dissenting)). The Chief Clerk of the Justice Court testified that this type of error occurred "on[c]e every three or four years." App. 37. In fact, once the court clerks discovered the error, they immediately corrected it, *id.,* at 30, and then proceeded to search their files to make sure that no similar mistakes had occurred, *id.,* at 37. There is no indication that the arresting officer was not acting objectively reasonably when he relied upon the police computer record. Application of the *Leon* framework supports a categorical exception to the exclusionary rule for clerical errors of court employees. *See Leon, supra,* at 916-922; *Sheppard, supra,* at 990-991.

Arizona v. Evans, 514 U.S. at 14-15 (emphasis added) (citations omitted; footnote omitted). A faithful reading of *Evans* is that the exclusionary rule is to have a limited reach, not an expanding reach.

Third, it is patently erroneous to stretch the reach of the exclusionary rule or of *White* 's application of the exclusionary rule to the Division of Driver Licenses. The Division of Driver Licenses is quite unmistakably an administrative agency. *See* Fla. Admin Code R. 15-1.001-.006 (1998). This is obviously similar to the court clerk being in an administrative role in *Evans.* Although the majority of this Court may disagree with *Evans* or

Leon, this Court's members are oath bound to recognize that this is the law.

HARDING, C.J., and QUINCE, J., concur.

FN1. The record reflects that Shadler was notified on April 24, 1997 that his license would be suspended if he did not complete an alcohol treatment course by May 14, 1997. Shadler completed the course and his license was returned to him on May 13, 1997.

FN2. These divisions are: (1) Division of the Florida Highway Patrol, (2) Division of Driver Licenses, (3) Division of Motor Vehicles and (4) Division of Administrative Services. *See* Fla. Admin. Code. R. 15-1.002 (1998).

FN3. For nearly sixty years, the Division of Driver Licenses and the Florida Highway Patrol have been serving interrelated functions as sister divisions in a larger department. The Department of Public Safety (DPS), composed of the Division of Driver Licenses and the Division of the Florida Highway Patrol was created in 1939. *See* ch. 19551, Laws of Fla. (1939). In 1969, the DPS was dissolved, and the Division of Driver Licenses and Florida Highway Patrol were transferred into the newly created DHSMV, as was the Department of Motor Vehicles. *See* ch. 69-106, s 24, Laws of Fla.

FN4. Indeed, this interrelationship is codified in the Florida Administrative Code. Section 15-1.003(5)(d) of the Code provides: "The Chief of the Bureau of Field Operations [of the Florida Highway Patrol] ... shall perform the following duties ... (d) Conduct close liaison with the Director of the Drivers License Division, Motor Vehicle Division, and Florida Department of Law Enforcement."

FN5. *Cf. Albo v. State,* 477 So.2d 1071, 1076 (Fla. 3d DCA 1985) (cautioning that the exclusionary rule is necessary to prevent "careless, perhaps deliberately neglectful, failure to delete names

from [the list of people subject to apprehension] on ... the correct theory that the longer the list, the more persons subject to search and the consequent seizure of admissible evidence").

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714 So.2d 662, 23 Fla. L. Weekly D1801, State v. Shadler, (Fla.App. 5 Dist. 1998)

23 Fla. L. Weekly D1801

STATE of Florida, Appellant,

v.

Stanley SHADLER, Appellee.

No. 97-3465.

District Court of Appeal of Florida,

Fifth District.

July 31, 1998.

Motorist who was charged with narcotics offense based on evidence discovered during search incident to his arrest for allegedly driving with suspended license moved to suppress evidence on ground that, at time police officer made arrest and effected the search, motorist's license had been reinstated. The Circuit Court, Putnam County, Stephen L. Boyles, J., granted motorist's motion to suppress, and state appealed. The District Court of Appeal, W. Sharp, J., held that error by employees of the Division of Driver's Licenses, in failing to update motorist's file to indicate that his license had been reinstated, could not be imputed to law enforcement for purpose of requiring suppression of evidence.

Reversed.

CRIMINAL LAW k394.4(9)

110 ---

110XVII Evidence

110XVII(I) Competency in General

110k394 Evidence Wrongfully Obtained

110k394.4 Unlawful Search or Seizure

110k394.4(9) Arrest, search incidental to; validity of arrest.

Fla.App. 5 Dist. 1998.

Error by employees of the Division of Driver's Licenses, in failing to update motorist's file to indicate that his license had been reinstated, could not be imputed to law enforcement, so as to require suppression of evidence seized by police officer when, acting in reliance on report of license suspension, he arrested motorist and discovered evidence in search incident to arrest; while employees of the Division of Driver's Licenses and officer who made arrest were both employed by Florida Department of Highway Safety and Motor Vehicles, they worked for separate divisions, and employees were not law enforcement personnel but more similar to court employees. U.S.C.A. Const.Amend. 4.

Robert A. Butterworth, Attorney General, Tallahassee, and Roberta J. Tylke, Assistant Attorney General, Daytona Beach, for Appellant.

Kevin R. Monahan, Palatka, for Appellee.

W. SHARP, Judge.

The state appeals an order of the trial court which granted Shadler's motion to suppress evidence of cocaine discovered by a police officer after a search incident to an arrest for driving with a suspended license. In concluding that the evidence should be

suppressed, the trial court relied upon *State v. White,* 660 So.2d 664 (Fla.1995). We reverse.

The trial court found that the arrest was based on information furnished to the police officer by the Florida Department of Highway Safety and Motor Vehicles (Department). In response to an inquiry by the police officer, the Department erroneously informed him that Shadler's driver's license had been suspended. In fact, Shadler completed an alcohol treatment course he had been ordered to attend and his license was reinstated. The trial court reasoned that because the Florida Highway Patrol is a law enforcement agency with law enforcement powers and is a division of the Department, the inaccuracy or failure to up-date computer records, was attributable to law enforcement personnel.

The Florida Supreme Court held in *State v. White* that evidence should be suppressed ***663.** where an arrest is based on erroneous information furnished by a police officer or agency. The erroneous information in *White* stemmed from erroneous information in a computer in the sheriff's office. The court distinguished between situations where erroneous computer information results from *clerical errors committed by court or non-law enforcement personnel* and those resulting from *errors committed by the police or law enforcement personnel.*

The answer to the question of whether the exclusionary rule (FN1) should be invoked to bar evidence seized as a result of an illegal arrest, apparently turns on whether the erroneous computer information results from errors committed by court employees or non-law enforcement personnel, or whether the information stems from police or law enforcement employees. *Arizona v. Evans,* 514 U.S. 1, 115 S.Ct. 1185, 131 L.Ed.2d 34 (1995); *Bruno v. State,* 704 So.2d 134 (Fla. 1st DCA 1997); *Bunse v. State,* 661 So.2d 389 (Fla. 5th DCA 1995).

We disagree with the trial court that the error in this case can be attributed to police or law enforcement personnel merely

because the Department contains four divisions under the governor and cabinet of Florida, one of which is the Florida Highway Patrol (a law enforcement agency). The other three divisions, the Division of Driver's Licenses, the Division of Motor Vehicles and the Division of Administrative Services, are independent from one another as well as the Florida Highway Patrol. Each has its own separate organizational structure and division director. The erroneous information came from the Division of Driver's Licenses. Persons working for that division are not law enforcement personnel, but rather are more similar to the court employees in *Arizona v. Evans*.

REVERSED.

PETERSON and THOMPSON, JJ., concur.

FN1. U.S. Const, amend. IV; Art. I, s 12, Fla. Const.